IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

WP(C).No. 32076 of 2006(R)

PETITIONER:

K.RAGHAVAN, KOCHUVELIYIL NINNUM KIZHAKKEMADATHIL, AGED 80, MUHAMMA P.O., ALAPPUZHA.

BY ADV. SRI.J.OM PRAKASH

RESPONDENTS:

THE UNION OF INDIA REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, NEW DELHI.

BY ADV. SRI.C.K.SASI, CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 32076/2006 R

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE CONVICT REGISTER BY THE SUPERINTENDENT CENTRAL PRISON THIRUVANANTHAPURAM.

EXT.P2. COPY OF THE APPLICATION OF THE PETITIONER DT. 27/4/98.

EXT.P3. COPY OF THE ORDER OF THE DIST. COLLECTOR, ALAPPUZHA DT. 21/1/88.

EXT.P4. COPY OF THE PROFORMA FOR VARIFICATION OF FREEDOM FIGHTERS PENSION SCHEME BY THE TAHSILDAR.

EXT.P5. COPY OF THE LETTER OF THE DIST. COLLECTOR, ALAPPUZHA DT. 2/1/2004.

EXT.P6. COPY OF THE REVIEW PETITION DT. 14/10/2005.

EXT.P7. COPY OF THE CONVICT REGISTER BY THE SUPERINTENDENT CENTRAL PRISON, THIRUVANANTHAPURAM.

EXT.P8. COPY OF THE COUNTER AFFIDAVIT OF THE R2 IN WPC NO. 31923/2005 DT. 24/5/2006.

EXT.P9. COPY OF THE ORDER BY THE UNDER SECRETARY TO THE GOVT. OF INDIA MINISTRY OF HOME AFFAIRS DT. 19/10/2006.

EXT.P10. COPY OF THE LETTER OF THE JOINT SECRETARY TO GOVT. OF INDIA, MINITSRY OF HOME AFFAIRS DT. 24/11/2003.

RESPONDENT'S EXHIBITS NIL.

True copy

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T.R.RAMACHANDRAN NAIR, J.

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WP(C).No. 32076 of 2006-R.

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Dated this the 24th day of August, 2007.

J U D G M E N T

The petitioner is aggrieved by the rejection of the application for Swathantrata Sainik Samman pension as per Ext.P9 order. The same was rejected by the Central Government inspite of the fact that the State Government had recommended the same. The claim is in respect of Punnapra-Vayalar struggle which has been recognised for grant of Central Pension. The petitioner was arrested in connection with CC.No.17/1125 ME of the First Class Magistrate Court, Cherthala and was convicted for one year. The details of conviction and sentence are stated in Ext.P1 which is the true extract of the convict register of the Central Prison, Thiruvananthapuram.

2. Ext.P2 is the application for Central pension and Ext.P3 is the order granting pension under the State scheme. Ext.P4 is the proforma for verification of freedom fighters pension scheme certified by the Tahsildar which shows the details of conviction, sentence awarded, actual imprisonment suffered and that fact that the same was in connection with the participation

in the freedom movement. Earlier the State Government had refused to recommend the same as per Ext.P5 for want of official documents. Thereafter the petitioner filed a review petition Ext.P6 producing the extract of the convict register. The petitioner had filed earlier a writ petition WP(C). No.31923/2005 and Ext.P8 is a counter-affidavit filed by the State Government in that case. One more aspect is relevant here. It is admitted therein that he is the recipient of Kerala Freedom Fighters pension which was granted based on his claim for participation in the very same struggle. After referring to the convict register from the Central Prison it is further averred in Ext.P8 that the same was got verified and it was found genuine by the Superintendent of Central Prison, Thiruvananthapuram and accordingly the SSS pension application with enclosures and copy of the report of the Superintendent of Central Prison and a copy of the representation has been forwarded to Government of India duly recommending for SSS pension as per Government letter dated 15.2.2006. Therefore the writ petition was disposed of directing the Central Government to pass orders.

3. In Ext.P9 the main reason for rejection is that the period of claimed imprisonment from 16.1.1950 to 16.9.1950 in respect of the petitioner pertains to the post independence period and therefore not logically related to the National Freedom Struggle. The further reasons are that acceptable

primary evidence has not been produced, valid non-availability of records certificate is not furnished and in the absence of valid non-availability of records certificate, personal knowledge certificate issued by Kunjan Sukumaran is not acceptable. And finally it is stated that in the extract of the convict register there is no mention that the sentence is in connection with taking part of Punnapra-Vayalar or the national freedom struggle.

4. The stand taken by the Central Government about the struggle in question is absolutely without any merrit in the light of Ext.P10 which shows that the Punnapra-Vayalar struggle has been recognised for grant of SSS pension even if the entire period of claimed suffering is after independence. This is a letter issued by the Government of India to the State Government and the State has been advised to forward the applications of participants of Punnapra-Vayalar in view of the above clarification.

5. I will come to the validity of the next ground now. It relates to the assumption that in the extract of the convict register it is not recorded that the conviction was in relation to Punnapra-Vayalar struggle. In fact, it is beyond comprehension as to how such details could have found a place in the convict register itself. The case was registered prior to independence and in the official records of those periods there would not have been any mention that the person concerned is involved in Punnapra-Vayalar struggle which is

part of national freedom movement. In this case there are various documents to prove that the petitioner was involved in Punnapra-Vayalar struggle. The first one is Ext.P4 report of the Tahsildar where in column 7, it is clearly reported that the imprisonment of the petitioner due to the participation in the freedom fight movement. The other thing is the counter-affidavit Ext.P8 filed by the State Government in the earlier writ petition WP(C). No.31923/2005 wherein it is admitted that he had participated in the Punnapra-Vayalar struggle. It is clear that in the letter recommending his application the said fact will necessarily find a place. It is also clear from the averments therein that the jail records have been verified with original and it was found genuine by the Jail Superintendent, Central Prison, Thiruvananthapuram. As regards the participation of the petitioner in the said struggle the recommendation of the State Government ought to have been accepted and the reason for rejection is too flimsy. A freedom fighter is entitled to respect and honour, and his application cannot be rejected for such technicalities.

6. Herein there is a clear primary evidence by way of Ext.P1 which is a genuine document as reported by the State Government. Therefore, the reason that the same is not acceptable is without any justification. The Central Government has not stated any valid reasons for doubting the

acceptability of it in Ext.P9 or in the counter-affidavit filed before this Court. The other ground like non-production of valid non-availability of records certificate and the personal knowledge certificate are not relevant here because, going by the scheme they are required only when primary evidence is not available.

7. This a case where the petitioner has clearly proved his eligibility for grant of pension. The relevant documents could not have been rejected by the Central Government especially in the light of the principles stated in the decision of the Supreme Court reported in *Gurdial Singh v. Union of India* and others (2001(8) SCC 8). The Apex Court held in para.7 as follows:

> **"The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be covered by the Scheme had suffered for the country about half-a-century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of "beyond reasonable doubt". Once on the basis of the evidence it is probabilised that the claimant had suffered imprisonment for**

the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence. ”

8. Apart from that the petitioner is a recipient of State pension for the very same jail suffering in the freedom movement. For all these reasons, Ext.P9 is quashed. It is declared that the petitioner is entitled for grant of pension under the Swathantrata Sainik Samman Pension Scheme. The first respondent is directed to pass orders sanctioning the pension with effect from the date of receipt of Ext.P2 application which is dated 27.4.1998 within a period of six weeks from the date of receipt of a copy of this judgment.

The writ petition is allowed as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-